



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

DEC 14 2009

The Director

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JOHN BERRY
Director

Subject: Excusing Federal Employees from Duty for the Last Half of the Scheduled Workday on Thursday, December 24, 2009

The President has issued an Executive order excusing executive branch non-Postal Service employees from duty for the last half of the scheduled workday on Christmas Eve, Thursday, December 24, 2009, with pay and without a charge to leave, except those who, in the judgment of the head of the agency, cannot be excused for reasons of national security, defense, or other essential public need. (See Attachment 1.)

For pay and leave purposes, the last half of the scheduled workday on December 24, 2009, will be treated as falling within the scope of statutes and Executive orders governing holidays for Federal employees.

- Most employees who are excused from duty for the last half of the scheduled workday on December 24th will receive the basic pay they would have received if no Executive order had been issued. (This policy does not apply to employees who receive annual premium pay for standby duty (5 U.S.C. 5545(c)(1)) or firefighters who are covered by special pay provisions (5 U.S.C. 5545b).)
- An employee who was previously scheduled to take annual leave on December 24th will not be charged annual leave (or any other form of paid leave, compensatory time off, or credit hours) for the last half of the scheduled workday.
- An employee who is required to work nonovertime hours during the last half of his or her scheduled workday on December 24th is entitled to holiday premium pay (5 U.S.C. 5546(b)).

If an employee has scheduled "use or lose" annual leave for the last half of the scheduled workday on December 24, 2009, and is unable to reschedule that leave for use before the end of the leave year (i.e., January 2, 2010), the leave will be forfeited. When "use or lose" leave is forfeited under these conditions, the law (5 U.S.C. 6304(d)) does not permit restoration of the leave.

Pay and Leave Administration Guidance

The President's Executive order excuses Federal employees from duty during a pay period in which two holidays (Christmas and New Year's Day) already occur. Agency supervisors and employees should carefully review work schedules and leave requests.

The U.S. Office of Personnel Management (OPM) has prepared a fact sheet to provide pay and leave administration guidance specific to December 24 and 25, 2009. (See Attachment 2.) There are also three fact sheets on our website with information and guidance relating to holidays, work schedules, and pay.

- "Federal Holidays - Work Schedules and Pay" at <http://www.opm.gov/oca/worksch/HTML/HOLIDAY.asp>,
- "Compressed Work Schedules" at <http://www.opm.gov/oca/worksch/HTML/AWSchs.asp>, and
- "Flexible Work Schedules" at <http://www.opm.gov/oca/worksch/HTML/awsfws.asp>.

Additional Information

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources office for assistance. Employees of the U.S. Postal Service and contract employees should contact their supervisor (or contract officer) to obtain information on their pay and leave entitlements for December 24th.

cc: Chief Human Capital Officers
Human Resources Directors

Attachments

1. Executive Order
2. Questions and Answers

Attachment 1

Executive Order

Half-Day Closing of Executive Departments and Agencies of the Federal Government on Thursday, December 24, 2009

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty for the last half of the scheduled workday on Thursday, December 24, 2009, the day before Christmas Day, except as provided in section 2 of this order.

Sec. 2. The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must remain on duty for the full scheduled workday on December 24, 2009, for reasons of national security, defense, or other public need.

Sec. 3. Thursday, December 24, 2009, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Barack Obama

The White House,
December 11, 2009.

Questions on Pay and Leave Administration for December 24 and 25, 2009

Leave

Q1. Are employees who are scheduled to take annual leave on the last half of the scheduled workday on Thursday, December 24, charged leave for that day?

A1. Employees who are scheduled to take annual leave for the last half of the scheduled workday on Thursday, December 24, will not be charged leave for the last half of the scheduled workday.

Q2. Will employees forfeit “use or lose” annual leave scheduled for Thursday, December 24?

A2. If an employee has scheduled “use or lose” annual leave for the last half of the scheduled workday on Thursday, December 24, and is unable to reschedule that leave for use before the end of the leave year (i.e., January 2, 2010), the leave will be forfeited. When “use or lose” leave is forfeited under these conditions, the law does not permit restoration of the leave. (See 5 U.S.C. 6304(d).) (We note that employees may donate their excess annual leave to an approved leave recipient under the voluntary leave transfer program. See the fact sheet on voluntary leave transfer at <http://www.opm.gov/oca/leave/HTML/LVTRAN.HTM>.)

“In Lieu of” Holiday

Q3. What days are the “in lieu of” holiday/half-day holiday for an employee whose basic work schedule does not include Thursday, December 24, and/or Friday, December 25?

A3. When a holiday falls on a nonworkday outside a full-time employee’s basic workweek, he or she is entitled to an “in lieu of” holiday. Except when the holiday falls on Sunday, the day to be treated as the “in lieu of” holiday is the workday immediately preceding the nonworkday. (See 5 U.S.C. 6103(b) and section 3(a) of Executive Order 11582, February 11, 1971.)

- If Thursday, December 24, is a nonworkday that falls outside a full-time employee’s basic workweek, the half-day holiday will be observed on the last workday immediately preceding December 24.
- If Friday, December 25, is a nonworkday that falls outside a full-time employee’s basic workweek, the December 25 holiday will be observed on the last workday immediately preceding December 25. If that day happens to be Thursday,

December 24, the half-day holiday will be observed on the last workday immediately preceding December 24.

- If Thursday, December 24 and Friday, December 25, are both nonworkdays that fall outside a full-time employee's basic workweek, the December 24 half-day holiday will be observed on Tuesday, December 22, and the December 25 holiday will be observed on Wednesday, December 23.

Q4. May an agency change an AWS employee's "in lieu of" holiday from Friday, December 25, to Monday, December 28?

- A4. No, but with one limited exception. An agency may select an alternative "in lieu of" holiday for employees on fixed compressed work schedules if the agency head determines that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact," as defined in 5 U.S.C. 6131(b). (See 5 U.S.C. 6103(d).)

Although there is no authority for an agency to change the "in lieu of" holiday for an employee on a flexible work schedule, the employee may reschedule his or her AWS day off consistent with agency policy.

Q5. Are part-time or intermittent employees entitled to an "in lieu of" half-day holidays?

- A5. No, there is no authority to grant "in lieu of" holidays to part-time or intermittent employees. Part-time employees are entitled to a holiday only if they have a regularly scheduled basic (i.e., nonovertime) tour of duty on the actual holiday (i.e., on Thursday, December 24, or Friday, December 25). Intermittent employees do not have a regularly scheduled tour of duty and may not be paid for holidays not worked.

Agencies may exercise their discretionary authority to grant excused absence (administrative leave) to part-time employees whose offices are closed on a day when most full-time employees have an "in lieu of" holiday. For example, in an organization in which full time employees generally have a Sunday through Thursday schedule, the "in lieu of" half-day holiday for Thursday, December 24, would be Wednesday. The agency may wish to excuse part-time employees from the last half of the workday on Wednesday, since the office's full-time employees have a half-day holiday on that day.

Basic Pay Entitlement on a Half-Day Holiday

Q6. How many hours of basic pay are employees entitled to receive for a half-day holiday?

- A6. *Full-Time Employees*

Full-time employees under a standard work schedule (8 hours a day, 40 hours a week) are excused from 4 hours of nonovertime work, and the excused absence (4 hours) is considered part of the 40-hour basic workweek.

Part-Time Employees

A part-time employee is entitled to a half-day holiday when the half-day holiday falls on a day when he or she would otherwise be required to work or take leave. This does not apply to overtime work. Part-time employees are excused from work for the last half of their regularly scheduled basic (nonovertime) workday and receive their rate of basic pay for that half holiday. For example, if a part-time employee had an 8-hour basic workday, the half holiday would be 4 hours and if a part-time employee had a 4-hour basic workday, the half holiday would be 2 hours.

Compressed Work Schedule

A full-time or part-time employee on a compressed work schedule who is excused from duty during the half-day holiday is entitled to receive basic pay for half of the total number of nonovertime hours in his or her scheduled tour of duty on that day. For example, if a holiday falls on a 10-hour basic workday, the employee's holiday is 5 hours. (See 5 CFR 610.406.)

Flexible Work Schedule

A full-time employee on a flexible work schedule who is excused from duty during the half-day holiday is entitled to a maximum of 4 hours of pay for that period. A part-time employee on a flexible work schedule is entitled to one-half of the total number of hours in his or her scheduled tour of duty on that day not to exceed 4 hours. (See 5 CFR 610.405.)

Multiple holidays fall within the same pay period beginning December 20, 2009, and ending January 2, 2010. Therefore, full-time employees on a "5/4-9" flexible work schedule (or other flexible work schedules under which employees work more than 8 hours a day) must make arrangements to work extra hours during other regularly scheduled workdays or take annual leave, credit hours, compensatory time off, or compensatory time off for travel in order to fulfill the 80-hour biweekly work requirement.

Holiday Premium Pay

- Q7. Are all Federal employees entitled to holiday premium pay if required to work on a holiday?**
- A7. No. Members of the Senior Executive Service (SES), the Federal Bureau of Investigation and Drug Enforcement Administration SES, the Senior Foreign

Service, Foreign Service officers, and certain other employees who are excluded from the premium pay provisions of 5 U.S.C. chapter 55, subchapter V, are not entitled to holiday premium pay if required to work on a holiday. (See the definition of "employee" in 5 U.S.C. 5541(2).) In addition, employees receiving standby duty pay under 5 U.S.C. 5545(c)(1) and Federal firefighters compensated under 5 U.S.C. 5545b are not entitled to holiday premium pay.

Q8. How many hours of holiday premium pay are employees entitled to earn?

A8. *Full-Time Employees*

Full-time employees on standard work schedules (8 hours a day, 40 hours a week) receive holiday premium pay for up to 4 hours of non-overtime work during their regularly scheduled basic tour of duty during the half-day holiday.

Part-Time Employees

Part-time employees who are required to perform non-overtime work during their regularly scheduled tour of duty during the half-day holiday are entitled to receive holiday premium pay for up to one-half of the total number of nonovertime hours in their scheduled tour of duty on that day not to exceed 4 hours.

Flexible Work Schedule

Full-time employees on flexible work schedules are entitled to holiday premium pay, not to exceed 4 hours, if they are required to perform non-overtime work during their regularly scheduled tour of duty during the half-day holiday. Part-time employees on flexible work schedules who perform non-overtime work during the half-day holiday are entitled to holiday premium pay for up to one-half of the total number of nonovertime hours in their scheduled tour of duty on that day not to exceed 4 hours.

Compressed Work Schedule

Full-time and part-time employees under compressed work schedules are entitled to holiday premium pay if they are required to perform non-overtime work during their regularly scheduled tour of duty during the half-day holiday. An employee may earn holiday premium pay for up to one-half of the total number of nonovertime hours in his or her scheduled tour of duty. (See 5 CFR 610.407.)

NOTE: For the half-day holiday, an employee who performs work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty during the hours associated with the last half of the scheduled workday will receive holiday premium pay in addition to his or her regular pay for the hours associated with the last half of the day. Employees assigned to work during the last of half their

regularly scheduled tour of duty are entitled to a minimum of 2 hours of holiday premium pay

Q9. How is holiday premium pay calculated?

- A9. For each hour of holiday work, employees receive holiday premium pay. Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay, for each hour of holiday work. (See 5 U.S.C. 5546(b).)

Compensatory Time Off and Overtime Pay

Q10. May an employee who is required to work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday earn compensatory time off instead of holiday premium pay for that work?

- A10. No. An employee must receive holiday premium pay for work performed during his or her regularly scheduled basic (i.e., non-overtime) tour of duty (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday.

Compensatory time off is provided in lieu of overtime pay for irregular or occasional overtime work (or, when permitted under agency flexible work schedule programs, in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work). However, because a holiday is considered part of a full-time employee's regular 40-hour workweek (or 80 hours biweekly for employees on certain kinds of flexible or compressed work schedules), work performed during a regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday is not considered overtime work.

Q11. What if an employee performs work outside his or her regularly scheduled basic (i.e., nonovertime) tour of duty (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday? How is he or she compensated for that work?

- A11. A full time employee who performs work outside his or her regularly scheduled basic tour of duty (i.e., overtime work) on a holiday is compensated at the applicable overtime pay rate or through compensatory time off (in appropriate circumstances). Part time employees would earn overtime or compensatory time off for any hours worked over 8 in a day (or over the maximum number of nonovertime hours in their compressed work schedule) on a holiday. (See fact sheets on title 5 overtime pay at <http://www.opm.gov/oca/pay/HTML/FACTOT.ASP> and compensatory time off at <http://www.opm.gov/oca/pay/HTML/COMP.HTM>)

Night Pay

Q12. What pay will General Schedule (GS) employees receive if they perform work at night on a holiday?

A12. GS employees are entitled to night pay for regularly scheduled work (i.e., work scheduled in advance of the administrative workweek) between 6:00 p.m. and 6:00 a.m. (See fact sheet on night pay at <http://www.opm.gov/oca/pay/HTML/NIGHT.asp>.) Night pay for GS employees is equal to 10 percent of the employee's hourly rate of basic pay. Night pay is earned for regularly scheduled work at night even if an employee is also entitled to overtime pay/compensatory time off or holiday premium pay for the same hours of work. (See 5 CFR 550.122(c).)

Employees also are entitled to night pay when they are excused from regularly scheduled night work during holiday hours. A GS employee who is excused from night work during holiday hours receives his or her rate of basic pay plus night pay. (See 5 CFR 550.122(a).)

Night Shift Differential for Federal Wage System Employees

Q13. What pay will Federal Wage System (FWS) employees receive if they perform work at night on a holiday?

A13. Under the FWS, a night shift differential is basic pay for the purpose of computing holiday premium pay. The night shift differential is 7.5 percent for an FWS employee for whom the majority of regularly scheduled nonovertime hours are between 3:00 p.m. and midnight. The night shift differential is 10 percent for an FWS employee for whom the majority of regularly scheduled nonovertime hours are between 11:00 p.m. and 8:00 a.m.

An FWS employee who is entitled to holiday premium pay and who performs nonovertime work on a holiday is entitled to his or her rate of basic pay (including any applicable night shift differential) plus premium pay at a rate equal to the rate of basic pay (including night shift differential). The term "majority of hours" means the number of whole hours greater than half of a shift (e.g., 5 hours of a scheduled 8-hour shift). An FWS employee is entitled to pay (including night shift differential) for overtime work on a holiday under the same rules that apply to overtime work on regular workdays.

Credit Hours under a Flexible Work Schedule

Q14. May an employee on a flexible work schedule earn credit hours for working on a holiday?

A14. Employees may not earn credit hours in lieu of receiving holiday premium pay when they perform work during normal working hours. However, an employee on a flexible work schedule may earn credit hours, if permitted under an agency's

flexible work schedule policy, for work the employee elects to perform on a holiday that is in excess of his or her basic work requirement (typically 80 hours biweekly).

Employees Called Back to Work

Q15. Are employees entitled to overtime, night, and/or holiday premium pay if they are called back to work?

A15. When an employee is required to return to a worksite to perform irregular or occasional overtime work, he or she is entitled to receive a minimum of 2 hours of overtime pay. An employee who is called back to work during his or her regularly scheduled basic (i.e., nonovertime) tour of duty on a holiday is entitled to receive a minimum of 2 hours of holiday premium pay. (See 5 U.S.C. 5546(c).) However, an employee who is called back to perform irregular or occasional work at night is not entitled to receive night pay.

Holiday Premium Pay and Travel

Q16. Are employees entitled to holiday premium pay for the time they spend in work-related travel on a Federal holiday?

A16. Employees generally are not entitled to holiday premium pay for the time they spend in work-related travel during holiday hours of their tours of duty. Holiday premium pay is paid only to employees who perform work on a holiday. (See 5 U.S.C. 5546(b).) The criteria in 5 U.S.C. 5542(b)(2) must be used to determine whether travel time is hours of work for holiday premium pay purposes. (These are the same criteria used to determine travel time as hours of work for title 5 overtime pay purposes. The criteria are also found in 5 CFR 550.112(g).)

Time spent in a travel status is not hours of work for the purpose of paying title 5 premium pay, including holiday premium pay, unless it meets one of the criteria in 5 U.S.C. 5542(b)(2)(B) for crediting irregular or occasional hours of work for travel. The criteria state that time spent in a travel status away from the official duty station is not hours of employment unless the travel —

- involves the performance of work while traveling (e.g., employment as a truck driver);
- is incident to travel that involves the performance of work while traveling (e.g., “deadhead” travel performed by a truck driver to return an empty truck after unloading);
- is carried out under arduous and unusual conditions (e.g., on unpaved roads); or
- results from an event which could not be scheduled or controlled administratively by any individual or agency in the executive branch of the

Government (e.g., training scheduled solely by a private firm or a job-related court appearance required by a court subpoena).

Note 1: With respect to travel during holiday hours, this guidance applies to both Fair Labor Standards Act (FLSA) exempt and nonexempt employees. The provisions on travel time as hours of work for FLSA overtime pay purposes under 5 CFR 551.422 do not apply to the payment of holiday premium pay. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, they continue to be entitled to pay for the holiday in the same manner as if the travel were not required.

Note 2: Under 5 U.S.C. 5542(b)(2)(A), time spent traveling away from the official duty station is also hours of employment if the time spent is within the days and hours of an employee's regularly scheduled administrative workweek. However, this does not apply to travel time on a holiday for holiday premium pay purposes because an employee's regularly scheduled administrative workweek includes only periods of time in which an employee is regularly scheduled to work. Travel time during holiday hours generally is not work time and, therefore, does not fall within an employee's regularly scheduled administrative workweek. (See the definition of "regularly scheduled administrative workweek" in 5 CFR 610.102.)

Compensatory Time Off for Travel

Q17. If an employee is required to travel on a Federal holiday, is the employee entitled to receive compensatory time off for travel?

A17. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Although most employees do not receive holiday premium pay for time spent traveling on a holiday, an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, an employee may not earn compensatory time off for travel during basic (i.e., nonovertime) holiday hours because the employee is entitled to his or her rate of basic pay for those hours. However, if an employee travels outside of normal work hours (e.g., 8:00 a.m. to 4:30 p.m.) on a holiday, he or she is entitled to earn compensatory time off for travel if the travel time is not compensable under any other legal authority.

Firefighter Holiday Entitlements

Q18. Are Federal firefighters entitled to holiday premium pay for nonovertime work performed on the Christmas Eve half-day holiday?

A18. Federal firefighters generally are entitled to a special form of compensation that bars them from receiving holiday premium pay. Under current law, any firefighter with a regular tour of duty that averages 53 hours or more per

week is compensated under special basic pay and overtime pay rules. (See 5 U.S.C. 5545b and 5 CFR part 550, subpart M.) By law, these firefighters are not entitled to any other form of premium pay, including holiday premium pay. (See 5 U.S.C. 5545b(d)(1) and 5 CFR 550.1306(a).)

Q19. Are Federal firefighters excused from duty on the half-day holiday and entitled to holiday pay for hours during which no work is performed?

A19. Federal firefighters are paid under the special firefighter pay provisions. They can be required to work on a holiday at their normal pay rate, with no entitlement to holiday premium pay. They are not covered by the normal holiday rules. An individual firefighter may be permitted to take annual or sick leave on a holiday. If an agency determines that firefighters' services are not required on a particular holiday, the agency may at its discretion grant excused absence with pay, without charge to leave. (See 5 CFR 550.1306(a).)